

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

JANICE M. KYLE,

Plaintiff,

vs.

CIRCUS CIRCUS CASINOS, INC., *et al.*,

Defendants.

Case No. 2:07-cv-01574-JCM-GWF

**ORDER & FINDINGS AND
RECOMMENDATIONS**

This matter is before the Court on Defendants' Motion to Quash Service of Process for Insufficiency of Service (#55), filed on December 30, 2008; Defendants' Motion for Dismissal of Individual Defendants for Failure to Effect Service on Individual Defendants Pursuant to Court Order (#56), filed on December 30, 2008; and Defendants' Motion for Sanctions (#57), filed on December 30, 2008. To date, Plaintiff has failed to file responses to Defendants' motions, and the time for opposition has expired.

BACKGROUND

On June 10, 2008, the Court issued Order (#24), which quashed Plaintiff's service of process upon Defendants Melissa Witcher-Garcia, Terry Kisling, Cathy Moses, Gert Pina, and Robert Von Allmen as Defendants were not personally served with the summons and complaint. On July 14, 2008, Plaintiff filed her Motion to Issue and Service of Summons (#25). On August 22, 2008, the Court issued Order (#33), which directed Plaintiff to complete and furnish five (5) USM-285 forms to the U.S. Marshal for service upon Defendants. Furthermore, the Court directed Plaintiff to properly effect service upon Defendants by October 20, 2008.

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DISCUSSION

Fed. R. Civ. P. 4(e)(2)(A)(B) provides that a person may serve an individual within a judicial district of the United States by doing the following:

(A) delivering a copy of the summons and of the complaint to the individual personally; (B) leaving a copy of each at the individual's dwelling or usual place of abode with someone of suitable age and discretion who resides there; or (C) delivering a copy of each to an agent authorized by appointment or by law to receive service of process.

As evidenced by the Process Receipt and Return documents, Plaintiff directed the U.S. Marshal to serve the summons and complaint upon Defendants at the law firm of Kamer Zucker Abbott, 3000 W. Charleston Blvd. Ste. #3, Las Vegas, Nevada, 89102. *See Dockets* (#49), (#50), (#51), (#52), and (#53). The Process Receipt and Return documents note that Patricia Byer, receptionist for the law firm of Kamer Zucker Abbott, was served with process. The Process Receipt and Return documents further note that the U.S. Marshal has "personally served" Defendants. However, the Court finds that there is no evidence that establishes the fact that Defendants were personally served at the law firm of Kamer Zucker Abbott as the summons and the complaint were delivered to Ms. Byer, not to the Defendants individually. Therefore, the Court finds that Defendants were not properly served. Accordingly,

IT IS HEREBY ORDERED that Defendants' Motion to Quash Service of Process for Insufficiency of Service (#55) is **granted**.

IT IS FURTHER ORDERED that Defendants' Motion for Sanctions (#57) be **denied**.

RECOMMENDATION

IT IS HEREBY RECOMMENDED that Defendants' Motion for Dismissal of Individual Defendants for Failure to Effect Service on Individual Defendants Pursuant to Court Order (#56) be **granted**.


IT IS FURTHER RECOMMENDED that Defendants Melissa Witcher-Garcia, Terry Kisling, Cathy Moses, Gert Pina, and Robert Von Allmen be **dismissed**, without prejudice, as defendants in this case.

NOTICE

Pursuant to Local Rule IB 3-2, any objection to this Finding and Recommendation must be in writing and filed with the Clerk of the Court within ten (10) days. The Supreme Court has held that the

1 courts of appeal may determine that an appeal has been waived due to the failure to file objections
2 within the specified time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985). This circuit has also held that (1)
3 failure to file objections within the specified time and (2) failure to properly address and brief the
4 objectionable issues waives the right to appeal the District Court's order and/or appeal factual issues
5 from the order of the District Court. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991); *Britt v. Simi*
6 *Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).

7 DATED this 20th day of February, 2009.

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10 **GEORGE FOLEY, JR.**
11 **UNITED STATES MAGISTRATE JUDGE**
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